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14 Facsimile: (650) 856-3710

15 Attorneys for Plaintiff

16 ABBYY USA SOFTWARE HOUSE, INC.

17 ABBYY USA SOFTWARE HOUSE, INC.

18 Plaintiff,

19 vs.

20 **ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED PURSUANT TO L.R. 3-12;
DECLARATION OF GRANT KINSEL**

21 NUANCE COMMUNICATIONS, INC.

22 Defendant.

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ADMINISTRATIVE MOTION RE RELATED CASES
CV 08-1035 MEJ

1 Plaintiff Abby USA Software House, Inc. ("Plaintiff") respectfully files this
 2 Administrative Motion to Consider Whether Cases Should be Related, and would show the Court
 3 the following:

4 1. On June 3, 2008, the case entitled *Nuance Communications, Inc. v. Abby USA Software House, et al.*, Case No. CV 08-01097 AHM (FFMX) pending in the United States District Court for the Central District of California (the "Central District Action") was transferred from the Central District to this Court pursuant to Plaintiff's motion. A copy of the Central District's Transmittal Letter is attached to the Declaration of Grant Kinsel as Exhibit "1."

9 2. The Central District Action is a patent infringement action by Nuance Communications, Inc., the Defendant in this action ("Defendant"), against the Plaintiff in this action and other parties. In the Central District Action, Defendant alleges that Plaintiff and other third parties have infringed the same patents upon which Plaintiff seeks declaratory relief in this action.

14 3. On May 13, 2008, Plaintiff and Defendant stipulated to continue the Case Management Conference in this action in light of the pendency of Plaintiff's motion to transfer the Central District Action to this Court. The parties further stipulated that should the Court order the Central District Action transferred to this Court, then the Central District Action should be consolidated with this action. A copy of the Court's order approving the stipulation is attached to the Declaration of Grant Kinsel as Exhibit "2."

20 4. Therefore, the Court should find that the Central District Action is a related case, and consolidate the Central District Action with this matter.

22 Dated: June 5, 2008

FOLEY & LARDNER LLP
 23 GRANT E. KINSEL

26 By: /s/ Grant E. Kinsel
 27 GRANT E. KINSEL
 28 Attorneys for Plaintiff
 Abby USA Software House, Inc.

Declaration of Grant Kinsel

I, Grant Kinsel, declare:

1. I make this declaration on the basis of personal knowledge and if called to testify as a witness, I would and could testify competently hereto.

2. I make this declaration in support of Plaintiff's Administrative Motion to Consider Whether Cases Should be Related.

3. Attached as Exhibit “1” is a true and correct copy of the United States District Court for the Central District of California’s transmittal letter transferring the case captioned *Nuance Communications, Inc. v. Abbyy Software House, et al*, Case No. CV 08-01097 AHM (FFMX) (“Central District Action”) to this Court pursuant to Plaintiff’s motion to transfer venue.

4. Attached as Exhibit “2” is a true and correct copy of the stipulation and order continuing the Case Management Conference in this case in which Nuance Communications, Inc. (“Defendant”) stipulated to consolidate the Central District Action with this case.

5. On June 5, 2008, I spoke with counsel for Lexmark International, one of the named defendants in the Central District Action, who stipulates that the Central District Action is a related case, and should be consolidated with this matter. The other named defendant in the Central District Action, Abbyy Software House, did not appear in the Central District Action.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed June 5, 2008, at Los Angeles, California.

/s/ Grant Kinsel

PROOF OF SERVICE

I am employed in the **County of Los Angeles, State of California**. I am over the age of 18 and not a party to this action; my current business address is **555 South Flower Street, Suite 3500, Los Angeles, CA 90071-2411**.

On June 5, 2008, I served the foregoing document(s) described as: **ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT TO L.R. 3-12; DECLARATION OF GRANT KINSEL** on the interested parties in this action as follows:

X BY THE FOLLOWING MEANS:

I placed a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Terry Kearney
Julie M. Holloway
WILSON SONSINI GOODRICH & ROSATI, PC
650 Page Mill Road
Palo Alto, CA 94304-1050

Attorneys for Defendant
Nuance Communications, Inc.

Tung-On Kong
WILSON SONSINI GOODRICH & ROSATI, PC
One Market Street
Spear Tower, Suite 3300
San Francisco, CA 94105-1123

Attorneys for Defendant
Nuance Communications, Inc.

Eugene A. Feher
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Attorneys for Third-Party
Lexmark International, Inc.

BY EXPRESS SERVICE CARRIER (Via Overnight Courier Service)

X I placed the envelope(s) in a box or other facility regularly maintained by Federal Express, or delivered the document(s) to a courier or driver authorized by the express service carrier to receive document(s), in an envelope(s) or package designated by the express service carrier, with delivery fees paid or provided for, at **Los Angeles, California**.

X I am readily familiar with the firm's practice for collection and processing of correspondence for delivery by Federal Express: collected packages are picked up by an express carrier representative on the same day, with the Airbill listing the account number for billing to sender, at **Los Angeles, California**, in the ordinary course of business. I placed the envelope(s) in an envelope or package designated by the express service carrier for collection and processing for express service delivery on the above date following ordinary business practices.

X Executed on **June 5, 2008**, at Los Angeles, California.

X I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Grant Kinsel
Grant Kinsel



UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION
 312 North Spring Street, Room G-8
 Los Angeles, CA 90012
 Tel: (213) 894-3535

SOUTHERN DIVISION
 411 West Fourth Street, Suite 1053
 Santa Ana, CA 92701-4516
 (714) 338-4750

EASTERN DIVISION
 3470 Twelfth Street, Room 134
 Riverside, CA 92501
 (951) 328-4450

SHERRI R. CARTER
 District Court Executive and
 Clerk of Court

To: Clerk, United States District Court
 Northern District of California
 450 Golden Gate Avenue, Box 36060
 San Francisco, CA 94102-3434

Re: Transfer of our Civil Case No. CV 08-01097 AHM (FFMx)
 Case Title: Nuance Communications Inc., -v- Abbyy Software House, et al.,

Dear Sir/Madam:

An order having been made transferring the above-numbered case to your district, we are transmitting herewith our file:

Original case file documents are enclosed in paper format.
 Electronic Documents are accessible through Pacer.
 Other: _____

Very truly yours,

Clerk, U.S. District Court

Date: 6/4/2008 By J. Lam (213) 894-7982
 _____ Deputy Clerk

cc: *All counsel of record*

TO BE COMPLETED BY RECEIVING DISTRICT

Please acknowledge receipt via e-mail to appropriate address listed below and provide the case number assigned in your district:

CivilIntakecourtdocs-LA@cacd.uscourts.gov (Los Angeles Office)
 CivilIntakecourtdocs-RS@cacd.uscourts.gov (Riverside Office)
 CivilIntakecourtdocs-SA@cacd.uscourts.gov (Santa Ana Office)

Case Number: _____

Clerk, U.S. District Court

Date: _____ By _____
 _____ Deputy Clerk

GRANT KINSEL (CA BAR NO. 172407)
gkinsel@foley.com
FOLEY & LARDNER LLP
555 SOUTH FLOWER STREET, SUITE 3500
LOS ANGELES, CA 90071-2411
TELEPHONE: 213.972.4500
FACSIMILE: 213.486.0065

Attorneys for Defendant
ABYY USA SOFTWARE HOUSE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ABYY USA SOFTWARE HOUSE,
INC.

Plaintiff.

vs.

NUANCE COMMUNICATIONS, INC.

Defendant.

Case No: CV 08-1035 MEJ

**STIPULATION TO CONTINUE
CASE MANAGEMENT
CONFERENCE AND RESPONSE
DATE**



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2 ABBYY USA Software House, Inc. (“Abbyy USA”) and Nuance
3 Communications, Inc. (“Nuance”) stipulate with respect to the following facts:

4 1. ABBYY USA Software House, Inc. (“Abbyy USA”) filed this action
5 on February 20, 2008.

6 2. Defendant Nuance Communications, Inc. (“Nuance”) filed an action
7 against ABBYY USA, ABBYY Software House and Lexmark International, Inc.
8 on February 19, 2008 in the United States District Court for the Central District of
9 California (the “Central District Action”). The Central District Action is pending
10 before the Hon. A. Howard Matz.

11 3. Abbyy USA has moved to transfer venue of the Central District
12 Action to this Court. A hearing on Abbyy USA’s motion was originally set for
13 May 12, 2008. On May 8, 2008, the Court took off-calendar and under submission
14 Abbyy USA’s motion.

15 4. Abbyy USA served the complaint in this action on May 6, 2008.

16 5. Pursuant to the Court’s Case Management Schedule, the Court has set
17 May 29, 2008 as the Case Management Conference.

18 6. The parties believe that if the Central District Action is transferred to
19 this Court as requested by Abbyy USA, then it should be consolidated with this
20 action, and if the Central District Action is not transferred, this action will be
21 dismissed without prejudice.

22
23 WHEREFORE, the parties stipulate as follows:

24 To continue the Case Management Conference from May 29, 2008 to July
25 10, 2008 to provide the Central District with an opportunity to rule on Abbyy
26 USA’s Motion to Transfer Venue;

27 To continue Nuance’s last day to respond to the Complaint until twenty days
28 after the issuance of a ruling from the Court in the Central District Action as to

1 whether Abbyy USA's Motion to Transfer Venue is granted or denied.
2

3 SO STIPULATED:
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5 Dated: May 13, 2008
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FOLEY & LARDNER LLP
GRANT E. KINSEL

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8
9 By: /s/ Grant Kinsel _____
10 GRANT E. KINSEL
11 Attorneys for Plaintiff
12 Abbyy USA Software House, Inc.
13

14 Dated: May 13, 2008
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WILSON SONSINI GOODRICH &
16 ROSATI, P.C.
17 TUNG-ON KONG
18

19 By: /s/ Tung-On Kong _____
20 TUNG-ON KONG
21 Attorneys for Defendant
22 Nuance Communications, Inc.
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PROOF OF SERVICE

I am employed in the **County of Los Angeles, State of California**. I am over the age of 18 and not a party to this action; my current business address is **555 South Flower Street, Suite 3500, Los Angeles, CA 90071-2411**.

On March 19, 2008, I served the foregoing document(s) described as: on the interested parties in this action as follows:

BY THE FOLLOWING MEANS:

I placed a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Terry Kearney
Julie M. Holloway
WILSON SONSINI GOODRICH & ROSATI, PC
650 Page Mill Road
Palo Alto, CA 94304-1050

Attorneys for Plaintiff
Nuance Communications, Inc.

10 Tung-On Kong
11 WILSON SONSINI GOODRICH & ROSATI, PC
12 One Market Street
Spear Tower, Suite 3300
San Francisco, CA 94105-1123

Attorneys for Plaintiff
Nuance Communications, Inc.

13 Eugene A. Feher
14 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Attorneys for Defendant
Lexmark International, Inc.

BY MAIL.

I placed the envelope(s) with postage thereon fully prepaid in the United States mail, at **Los Angeles, California**.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service; the firm deposits the collected correspondence with the United States Postal Service that same day, in the ordinary course of business, with postage thereon fully prepaid, at **Los Angeles, California**. I placed the envelope(s) for collection and mailing on the above date following ordinary business practices.

BY FACSIMILE

I transmitted the document(s) by facsimile transmission from a facsimile transmission machine, at **Los Angeles, California**, with the telephone number, **213.486.0065**, to Click and Type Name whose facsimile transmission telephone number is Click and Type Number .

1 — I am readily familiar with the firm's practice for delivery by facsimile
 2 transmission: the firm transmits the document(s) from a facsimile
 3 transmission machine to the person to be served. I placed the
 4 document(s) in the place designated by the firm, at **Los Angeles, California**, for facsimile transmission to Click and Type Name whose
 5 facsimile transmission telephone number is Click and Type Number on
 6 the above date following ordinary business practices. The document(s) was transmitted from a facsimile transmission machine with the
 7 telephone number of **213.486.0065**.

8 The facsimile transmission was reported as complete without error by a
 9 transmission report, issued by the facsimile transmission machine upon which
 10 the transmission was made, immediately following the transmission.

11 — **BY HAND DELIVERY.** I delivered the envelope(s) **by hand** to addressee(s).

12 — **BY EXPRESS MAIL (Via United States Postal Service)**

13 — I deposited the envelope(s) in a facility regularly maintained by the United
 14 States Postal Service for receipt of Express Mail, with Express postage
 15 fully prepaid.

16 — I am readily familiar with the firm's practice for collection and processing
 17 of correspondence for Express Mail; the firm deposits the collected
 18 correspondence with a facility regularly maintained by the United States
 19 Postal Service for receipt of Express Mail that same day, in the ordinary
 20 course of business, with Express Mail postage thereon fully prepaid, at
 21 **Los Angeles, California**. I placed the envelope(s) for collection and
 22 Express Mailing on the above date following ordinary business practices.

23 — **BY EXPRESS SERVICE CARRIER (Via Overnight Courier Service)**

24 — I placed the envelope(s) in a box or other facility regularly maintained by
 25 Click and Type Name of Courier , or delivered the document(s) to a
 26 courier or driver authorized by the express service carrier to receive
 27 document(s), in an envelope(s) or package designated by the express
 28 service carrier, with delivery fees paid or provided for, at **Los Angeles, California**.

29 — I am readily familiar with the firm's practice for collection and processing
 30 of correspondence for delivery by Click and Type Name of Courier :
 31 collected packages are picked up by an express carrier representative on
 32 the same day, with the Airbill listing the account number for billing to
 33 sender, at **Los Angeles, California**, in the ordinary course of business. I
 34 placed the envelope(s) in an envelope or package designated by the
 35 express service carrier for collection and processing for express service
 36 delivery on the above date following ordinary business practices.

37 — Executed on **March 19, 2008**, at **Los Angeles, California**.

38 — I declare under penalty of perjury under the laws of the State of California
 39 that the above is true and correct.

40 — I declare that I am employed in the office of a member of the bar of this
 41 court at whose direction the service was made.

Click and Type Name

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5 Los Angeles, CA 90071-2411

6 Telephone: 213.972.4500

7 Facsimile: 213.486.0065

8 Michael J. Song (State Bar No. 243675)

9 E-Mail: msong@foley.com

10 **FOLEY & LARDNER LLP**

11 975 Page Mill Road

12 Palo Alto, CA 94304-1125

13 Telephone: (650) 856-3700

14 Facsimile: (650) 856-3710

15 Attorneys for Defendant

16 ABBYY USA SOFTWARE HOUSE, INC.

17 ABBYY USA SOFTWARE HOUSE, INC.

18 Plaintiff,

19 vs.

20 **[PROPOSED] ORDER ON**
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED

21 NUANCE COMMUNICATIONS, INC.

22 Defendant.

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1 Plaintiff Abbyy USA Software House, Inc.'s ("Plaintiff") Administrative Motion to
2 Consider whether Cases Should be Related having been considered by the Court along with any
3 oppositions to said motion, and good cause appearing therefor, the Court orders that the matter
4 *Nuance Communications, Inc. v. Abbyy Software House, et al*, United States District Court,
5 Central District of California Case No. CV 08-01097 AHM (FFMX) ("Central District Action")
6 transferred to this Court pursuant to order of the Court on June 3, 2008, is a related to this matter,
7 and shall be consolidated with this matter. Nuance Communications, Inc. ("Defendant") may
8 file its answer and counterclaims, and any third party claims, within twenty days following the
9 date of this order.

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11 Dated: _____

12 U.S. District Court Judge

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PROOF OF SERVICE

I am employed in the **County of Los Angeles, State of California**. I am over the age of 18 and not a party to this action; my current business address is **555 South Flower Street, Suite 3500, Los Angeles, CA 90071-2411**.

On **June 5, 2008**, I served the foregoing document(s) described as: **[PROPOSED] ORDER ON ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED** on the interested parties in this action as follows:

6 BY THE FOLLOWING MEANS:

I placed a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Terry Kearney
Julie M. Holloway
WILSON SONSINI GOODRICH & ROSATI, PC
650 Page Mill Road
Palo Alto, CA 94304-1050

Attorneys for Defendant
Nuance Communications, Inc.

Tung-On Kong
WILSON SONSINI GOODRICH & ROSATI, PC
One Market Street
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San Francisco, CA 94105-1123

Attorneys for Defendant
Nuance Communications, Inc.

Eugene A. Feher
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Attorneys for Third Party Lexmark International, Inc.

X BY EXPRESS SERVICE CARRIER (Via Overnight Courier Service)

X I placed the envelope(s) in a box or other facility regularly maintained by Federal Express, or delivered the document(s) to a courier or driver authorized by the express service carrier to receive document(s), in an envelope(s) or package designated by the express service carrier, with delivery fees paid or provided for, at **Los Angeles, California**.

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X Executed on June 5, 2008, at Los Angeles, California.

X I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Grant Kinsel
Grant Kinsel